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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 ALEXANDER OCASIO,

10 *Plaintiff,*

11 vs.

12 YONG-MIN HONG, *et al.*

13 *Defendants.*  
14  
15

2:06-cv-01187-JCM-RJJ

ORDER

16 This prisoner civil rights action comes before the court following upon the plaintiff's  
17 motion (#47) for stay of proceedings pending rehearing on appeal.

18 The motion will be denied as unnecessary. No mandate has been issued, and no  
19 proceedings currently are pending in the district court to stay. Any stay with regard to the  
20 appellate proceedings must be sought in the Court of Appeals.

21 The clerk will be directed to forward this order to the Court of Appeals in an immediate  
22 supplemental transmittal, given the request for a stay.

23 **For the benefit of the Court of Appeals, this court further notes as follows.**

24 The December 21, 2007, letter filed with the Court of Appeals by Deputy Attorney  
25 General Susan K. Stewart completely misstates the record to the Court of Appeals.

26 Final judgment in this case was entered on **March 15, 2007, not July 31, 2007** as  
27 stated by Ms. Stewart. Plaintiff never paid the \$11.66 initial partial filing fee in this case, after  
28 being afforded multiple opportunities by the court. The final deadline given to plaintiff to pay

1 the initial partial filing fee was February 16, 2007. Plaintiff did not pay the initial partial filing  
 2 fee by this date, by the time that judgment was entered, or, indeed, at any time thereafter.  
 3 The case accordingly was dismissed without prejudice on **March 15, 2007**, due to the  
 4 plaintiff's failure to pay the initial partial filing fee by the extended deadline of February 16,  
 5 2007, in response to multiple orders of the court.

6 No payments – of any kind – were received by the clerk on this case prior to the  
 7 dismissal of the case.

8 The court's financial records reflect that the court received an installment payment –  
 9 as opposed to the initial partial filing fee – of \$20.00 from the Nevada Department of  
 10 Corrections on April 13, 2007, nearly a month **after** entry of judgment. This \$20.00 payment  
 11 received by the clerk nearly a month after entry of final judgment was an automatic installment  
 12 payment that is required to be paid under the Prison Litigation Reform Act (PLRA) even if a  
 13 case is dismissed. This is expressly provided for in the court's initial IFP order:

14  
 15 IT IS ORDERED that plaintiff's application to proceed *in*  
 16 *forma pauperis* is GRANTED; however, *plaintiff shall be required*  
 17 *to pay an initial installment fee in the amount of \$11.66 toward the*  
 18 *full filing fee of three hundred fifty dollars (\$350.00).* Plaintiff shall  
 19 have thirty (30) days from the date this order is entered in which  
 20 to have the designated fee sent to the Clerk of Court. *Failure to*  
 21 *do so may result in dismissal of this action. Furthermore, even if*  
 22 *this action is dismissed, the full filing fee still must be paid*  
 23 *pursuant to 28 U.S.C. § 1915(b)(2).*

24 . . . . .

25 IT FURTHER IS ORDERED that the Clerk of Court shall  
 26 provide plaintiff with two copies of this order. Plaintiff is ordered  
 27 to make the necessary arrangements to have one copy of this  
 28 order attached to the check in the amount of the designated fee,  
 by sending a copy of the order with the "brass slip" for the amount  
 of the fee to Inmate Services for the Nevada Department of  
 Corrections.

IT FURTHER IS ORDERED that, pursuant to 28 U.S.C.  
 § 1915(b)(2), the Nevada Department of Corrections shall pay to  
 the Clerk of the United States District Court, District of Nevada,  
 20% of the preceding month's deposits to plaintiff's account (in  
 the months that the account exceeds \$10.00) until the full  
 \$350.00 filing fee has been paid for this action. . . . .

#2, at 1-2 (emphasis added).

1 Two points are significant.

2 First, the court did not receive *any* payments – of *any* description – prior to entry of final  
3 judgment herein. The case properly was dismissed on March 15, 2007 – after multiple  
4 opportunities for compliance – because plaintiff did not pay the \$11.66 initial partial filing fee  
5 required under both the court’s November 3, 2006, order and the PLRA.<sup>1</sup>

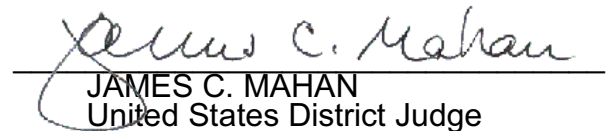
6 Second, plaintiff *never* paid the \$11.66 partial filing fee, and certainly not by the final  
7 deadline given of February 16, 2007. See #14, at 2.

8 In sum, this case was properly dismissed on March 15, 2007, because plaintiff did not  
9 pay the initial partial filing fee by February 16, 2007, despite being given multiple warnings  
10 and multiple opportunities to pay. That dismissal was entirely proper and was and remains  
11 fully supported by the record -- both the suit record and the court’s financial records. The  
12 court’s receipt of automatic installment payments *after* entry of final judgment – payments that  
13 are required to be paid under the PLRA even if a case is dismissed as funds become  
14 available in the inmate’s account – did not in any way undermine the basis for the dismissal.

15 IT THEREFORE IS ORDERED that plaintiff’s motion (#47) for stay of proceedings  
16 pending rehearing on appeal is DENIED as unnecessary.

17 IT FURTHER IS ORDERED that the clerk of court shall send a supplemental  
18 transmittal to the Court of Appeals with this order, **immediately and by the fastest means**  
19 **of transmittal, including by facsimile transmission.**

20 DATED: February 1, 2008.

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23   
24 JAMES C. MAHAN  
United States District Judge  
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27  
28 <sup>1</sup>Plaintiff instead, after sending his pauper application, depleted his account and spent approximately  
\$73.39 in discretionary inmate store purchases. See #32, at 3; see also #9.